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Supreme Court, U.S.
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No.

IN THE

Supreme Court of the United States

KURT KRAMER and MARIA KRAMER,

Petitioners,

v.

THOMAS KUBICKA and BONNIE KUBICKA.,

Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of Pennsylvania

PETITION FOR WRIT OF CERTIORARI

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Question Presented

In the case of a "void ab initio" State Court judgment (a nullity acknowledged by State case law) entered in violation of equal protection of the law as evident on the face of the record, is it a violation of the 14th Amendment of the U.S. Constitution for a state to maintain that the judgment can not be stricken, because the defendant satisfied the judgment?

In the case of a "void ab initio" state court judgment entered in violation of equal protection of the law as evident on the face of the record, is it a violation of the 10th and 14th Amendments of the U.S. Constitution for a state to maintain that the judgment can not be stricken, because the defendant satisfied the judgment, despite the defendant having been ignorant and uninformed that the judgment was "void ab initio", and the defendant having been ignorant that he or she had been deprived of equal protection of the law?

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PETITION FOR A WRIT OF CERTIORARI

Petitioners, Kurt Kramer and Maria Kramer, respectfully petition for a writ of certiorari to review the decisions and orders of the Superior Court of Pennsylvania, affirming the denial by the Court of Common Pleas, County of Bucks, to strike a "void ab initio" judgment entered against Kramers, the Supreme Court of Pennsylvania having denied a Petition for Allowance of Appeal in the matter.

Opinions Below

The opinion of the Superior Court of Pennsylvania is attached in the appendix pages 1a to 16a. The opinion of the Court of Common Pleas, County of Bucks, is attached in the appendix pages 19a to 30a.

Jurisdiction

On Dec.03, 2008, the Supreme Court of Pennsylvania, Doc. No.243 MAL 2008, denied the Application for Reconsideration of the Petition for Allowance of Appeal filed by Kurt and Maria Kramer.

Article III Section 2 of the United States Constitution stipulates that "the judicial power (of Supreme Court) shall extend ...to controversies
...between a state and citizen of another state;

between citizens of different states...In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction both as to law and as to fact.. " The current case falls within the above jurisdiction.

Per 28 U.S.C. 2403(b) the Attorney General of the Commonwealth of Pennsylvania has been served a copy of this Petition.

Authorities

"No judgment ...by default for failure to plead shall be entered by the prothonotary unless the praecipe for entry includes a certification that written notice of intention to file the praecipe was mailed or delivered... (ii) in the case of a judgment by default, after the failure to plead to a complaint and at least 10 days prior to the date of the filing of the praecipe to **the party against whom judgment is to be entered** and to the party's attorney of record, if any." Pa.R.C.P. 237.1(a)(2)(ii)

"It is elementary that judgment settles everything involved in the right to recover, not only all matters that were raised, but those which might have been raised..... The cause of action is merged in the judgment which then evidences a new obligation. That obligation, in this case, has been satisfied. In Federal Insurance Co. v.Robinson, 82 Pa. 357, Justice SHARSWOOD, in holding that usurious interest collected upon process of execution could

not be recovered back, said: "Money collected or paid upon lawful process of execution cannot be recovered back, though not justly or lawfully due by the defendant in the execution to the plaintiff.... The reason is a very obvious one. An execution is the end of the law. To permit money so collected or paid to be reclaimed in a new suit, would lead to indefinite and endless litigation. If such suit could be maintained, then another might be brought to recover the money paid on the judgment and execution in it, and so on ad infinitum.....A judgment may be subject to proceedings on equitable principles so long as it remains a judgment and a petition to modify may be regarded as an equitable application for relief from the effect of the judgment. But petitioner's difficulty now is that there is no judgment to be modified; the obligation represented by the judgment was discharged and satisfied of record two years before this petition was filed. We must therefore dismiss it. The policy of the law requires that there be an end to litigation; examples are common; claims, barred by the statute of limitations, may not be recovered; the statute of frauds frequently renders promises unenforceable; appeals taken too late are quashed. Lance v. Mann, The Supreme Court of Pennsylvania, 360 Pa. 26; 60 A.2d 35; 1948

"...No State shall make or enforce any law which shall abridge the privileges or immunities of
citizens of the United States; nor shall any State deprive any person of life, liberty, or property

without due process of law; nor deny to any person within its jurisdiction the equal protection of the law." Section 1, The 14th Amendment of the United States Constitution.

"The powers not delegated to the United States by the Constitution or prohibited by it to the States, are reserved to the States respectively, or to the people." The 10th Amendment of the United States Constitution.

Statement of the Case

1) The Petitioners, Kramers, residing in New Jersey and the Kubickas residing in Yardley, Pa.,were life long friends. During the period from 1978 to 1994 Kubickas made 9 loans to Kramers in amounts ranging from $1000 to $7000, and Kramers made large, ostensibly interest only monthly payments. In 1994 Kramers were unable to keep up any more payments. In 1999 Kubickas commenced action in the Bucks County Court of Common Pleas, Case No. 99-003721-13-1, to collect on the 9 loans. Kramers retained an attorney, Anthony Bruneio, who made an appearance, but he failed to answer the Complaint and was subsequently suspended from practice. **A 10 day default warning** was mailed July 18, 2000, to the attorney just a month before his suspension (see 38a to 41a), but **was not mailed to the Kramers directly as required by Pa.R.C.P. 237.1(a)(2)(ii).**

> "No judgment..by default...shall be entered by the prothonotary unless..a written notice of intention to file the praecipe was mailed or delivered..(ii)..at least 10 days prior to he date of filing..to the party against whom the

judgment is entered and to the party's attorney.." Pa.R.C.P. 237.1(a)(2)(ii).

The Court was promptly on notice of Bruneio's Aug 19, 2000, suspension. Despite that notice of sus- pension and despite Kramers not having been served a warning directly per Pa.R.C.P. 237.1(a)(2)(ii), a de-fault judgment was entered Sept 15, 2000, against Kramers four weeks after Bruneio's suspension. On Jan. 4, 2001, a Full Faith and Credit Attestation (see 36a & 37a) was issued in spite of the absence of the Pa.R.C.P. 237.1(a)(2)(ii) warning to Kramers in the record. On Feb 6, 2001, the void judgment was re- corded in the Superior Court of New Jersey. Thus handicapped by the court's unequally applying the Pa.R.C.P. thereby entrapping Petitioners into think- ing they faced a binding judgment, **not aware of Pa.R.C.P. 237.1(a)(2)(ii), and not aware that, because that rule was violated, the default judgment was "void ab initio", and not aware that expired time limits (the 10 day rule in Pa.R.C.P. 237.3) would not bar striking the void default judgment against them**, and further handicapped by attorney Bruneio's ab- sconding with their retainer, on May 18, 2001, Kramers paid Kubickas with an accord and satisfaction check for $59,500 which Kubickas accepted. Kramers used accident insurance moneys they had recently received. Kramers filed a usury and civil rico action in the US District Court of New Jersey on May 18, 2005, Doc.No.05-CV-2621 (WJM). On page 4 of their October 27, 2005, pleading, in that court and reiterated again on page 3 of their Nov. 25, 2005, Brief in Support of Summary Judgment, Kramers noted the major prothonotary mistake on the face of

the Bucks County judgment record. Kramers cited and relied on Erie v. Bullard, 839 A.2d 383:

> "Pursuant to Pa.R.C.P. 237.1(a), a party seeking default judgment must provide the opposing party with a ten-day notice of it's intent to obtain a default judgment to the party against whom judgment is to be entered and to the party's attorney of record, if any...Since the Prothonotary was without authority to enter judgment against Appellant (for failure to serve Appellant in addition to serving his attorney, Kubickas likewise failed to serve Kramers separately when serving Kramer's attorney), the judgment is void ab initio."

On June, 9, 2006, the District Court ruled that the Bucks County default judgment stood as res judicata, barring Kramers' suit (see 49a to 58a). While oblivious to Kramers argument that the judgment was "void ab initio", the District Court conceded counterfactually (54a) "1) the judgment in the prior action must be valid,...." And (55a) the judgment must be "properly entered".

Kramers appealed the District Court decision in the US Third Circuit Court of Appeals,Doc.No. 06-3355, on the grounds that the Bucks County default judgment was "void ab initio" for Kubickas' failure to send a 10 day default warning to Kramers before obtaining the default judgment in September of 2000. Kramers raised the question:

> " Are the merits of a litigation always to be merged away into a state judgment, even when that judgment is clearly apparent on the face of

> the record to be a nullity and "void ab intio" under state law? "

The Court of Appeals denied Kramers' Appeal on March 6, 2007 (see 42a to 48a), finding that so long as no other Court ruled the Judgment to be void, the Federal Courts would continue to consider the judgment to be "valid"(47a). Kramers filed a Petition to Strike the "Void ab Initio" Judgment in the court of the judgment's origin, Bucks County Court of Common Pleas, on March 2, 2007 before the U.S. Court of Appeals made its ruling, arguing:

> "...The right of a prothonotary to enter judgment on a note is statutory and must be strictly construed: Oberlin v. Parry, 287 Pa. 224. The judgment was void on its face ..... **Moreover, as a void judgment, it could be stricken off at any time:** Pantall v. Dickey, 123 Pa. 431...No laches can run against a void judgment, which is a mere blur on the record and which it is the duty of the court of its own motion to strike off, whenever its attention is called to it..." Romberger v. Romberger, 290 Pa. 454; 139 A. 159.

Simultaneous with the filing of the Petition in Bucks County, Kramers filed a Motion for a Stay in the U.S. Court of Appeals, pending the Petition in Bucks County, which Stay Petition the U.S, Court of Appeals denied. (42a)

On June 12, 2007, the Bucks County Court ordered the Petition to Strike denied without an Opinion.(35a) On July 12, 2007, Kramers made Notice of Appeal of Bucks County's denial of their

Petition to Strike. On Aug 8, 2007, Kramers filed their 1925(b) Statement (see 31a to 34a) and Civil Docketing Statement with the Superior Court without benefit of an Opinion in connection with Bucks County's denial of their Petition. On October 4, 2007, Judge Devlin-Scott of the Bucks County Court of Common Pleas issued an 8 page Opinion in connection with that Court's denial of Kramers' Petition to Strike "void ab Initio" Judgment..(see 19a to 30a) On Dec 3, 2007, Kramers filed their Appellants' Brief arguing:

"9) Appellants position is that it is un-constitutional to apply the Lance v. Mann dictum (satisfaction bars further opening or striking of a judgment) to a judgment "void ab initio" on the face of the record for failure of the Court to apply the law equally, which entry of judgment puts the Court in violation of the 14th Amendment. The government can not excuse its own failures to equally apply the law on the backs of cheated litigants who are duped into satisfying nullity judgments parading under the authority and imprimatur of the Court."

On Mar 17, 2008, the Superior Court of Pennsylvania, Doc.No.1751 EDA 2007, affirmed in a 14 page Decision the Bucks County Court of Common Pleas denial of Kramers' petition to strike.(see 1a to 16a) A Petition for Allowance of Appeal, No. 243 MAL 2008, was filed with the Supreme Court of Pennsylvania on April 16, 2008 asking:

"Petitioners believe a definitive answer is

> needed and has not been given to the questions of (1) why facially unconstitutional or facially entered without jurisdiction void judgments and (2) why judgments which order the payment of usury should not be excluded from the Lance v. Mann stricture.."

and arguing variously:

> "The denial of petitioner's request in the circumstances here involved constitutes a denial of due process, contrary to the 14th Amendment of the Federal Constitution renders void the judgment.." Wade v. Mayo, Supreme Court of the United States; 1948, 334 U.S. 672, 683; 68 S. Ct. 1270, 1276.

The Petition for Allowance of Appeal was denied by the Supreme Court of Pennsylvania on December 3, 2008. This Petition follows.

Reasons for Granting the Writ

Leading thinkers at the time of our country's founding courageously questioned absolute monarchy and turned instead to new principles upon which man could be governed. Among those new principles of government bequeathed to us by the Enlightenment was equality:

> "To understand political power right.....we must consider.....a state of equality , wherein all power and jurisdiction is reciprocal,....that creatures born to all the same advantages of nature, and the use of the same faculties, should also be equal one amongst another

without subordination or subjection..." "The Second Treatise on Government", Chapter 2, John Locke, 1683

"I shall end this chapter ...by remarking on a fact on which the whole social system should rest: i.e. that, instead of destroying natural inequality, the fundamental compact substitutes, for such physical inequality as nature may have set up between men, an **equality** that is moral and legitimate, and that men, who may be unequal in strength and intelligence., **become every one equal by convention and legal right.**" Book I, "The Social Contract", Jean-Jacques Rousseau, 1761

"..what I call virtue in a republic is love of the homeland, that is, love of **equality**...it is a political virtue, and this is the spring that makes the republican government move.." Author's foreward, "The Spirit of Laws", Montesquieu, 1757

The Enlightenment gave the United States its first principle of governance, universally celebrated by children, young and old, every Fourth of July:

"We hold these truths to be self-evident, that all men are created **equal**..." Declaration of Independence, Thomas Jefferson, 1776.

"..Nor shall any state ...deny to any persons within its jurisdiction the **equal** protection of the law.." 14th Amendment of the U.S. Constitution, 1867

> "Described generally, ..government is democratic; it avoids concentration of too much power in too few hands; it protects personal liberty; it insists that the law respect each individual equally; and it acts only upon the basis of the law itself.... The Civil War amendments...sought to draw all citizens, irrespective of race, into the community and ...those amendments, in guaranteeing that the law would **equally** respect all "persons", hoped to make the Constitution's opening phrase , "We the People", a political reality." Introduction "Active Liberty", Stephen Breyer, 2005

Pennsylvania's Injury to Petitioners

Yet in Kramers' present obscure case some 233 years after the founding of our country on this principle of **equality**, the Commonwealth of Pennsylvania has declared a precedent that **equal protection of the law is no longer necessary,** and can be overridden without consequence under color of innovative court policies and arbitrary theories of court rules:

> "An error in sending notice of an intent to file a default judgment does not ..nullify the satisfaction of the judgment..." Opinion, at 12a, Kubicka v. Kramer, 2008, Superior Court of Pennsylvania, No.1751 EDA 2007.

Ironically, a recent previous panel of the Superior Court of Pennsylvania has recently described the an identical kind of "error" in a similar case to be

of major consequence, to be in essence an unconstitutional judgment entered without jurisdiction:

> "Pa.R.C.P. 237.1(a)(2)(ii) seeks to ensure that default judgments are not entered without a defendant's knowledge.....A record that reflects a failure to comply with Pa.R.C.P. 237.1(a)(2)(ii) is facially defective and cannot support a default judgment. Fierst v. Commonwealth Land Title Ins. Co. 369 Pa. Super. 355, 535 A.2d 196 (Pa. Super. 1987) Furthermore, since the prothonotary lacks authority to enter judgment under these circumstances, the default judgment would be void ab initio...Erie's non-compliance created a facial defect which denied the prothonotary the authority to enter the judgment. See Fountainville Historical Farm Ass'n of Bucks County, Inc., supra Since the prothonotary was without authority to enter judgment against Appellant, the judgment is void ab initio. See Jones v. Seymour, 321 Pa. Super. 32, 467 A.2d 878, 880 Pa.Super 1983 (emphases added), ("unauthorized entry of judgment by the prothonotary renders the judgment void, and . . . such a judgment must be stricken **without regard to the passage of time,** if its defectiveness is apparent on the face of the record"). Thus, the unauthorized default judgment is a nullity. See Mullen v. Slupe 360 Pa. 485, 490, 62 A. 2nd 14, 16 (1948) judgment "entered without authority . . . is no judgment at all so far as it affects the rights of the defendants.")

> (quoting Long v. Lemoyne Borough, 222 Pa. 311, 318 71 A 211, 2112 (1908)) " Erie Insurance Co. v. Shirley Bullard, Superior Court of Pennsylvania, Pa Super 448; 839 A.2d 383; 2003

Pa.R.C.P. 237.1(a)(2)(ii) is a protection in Pennsylvania law against defense attorney malpractice in situations where the attorney fails to answer the complaint and defaults his client's case. Pa.R.C.P. 237.1(a)(2)(ii) stipulates:

> "(2) No judgment ...by default for failure to plead shall be entered by the prothonotary unless the praecipe for entry includes a certification that written notice of intention to file the praecipe was mailed or elivered... (ii) in the case of a judgment by default, after the failure to plead to a complaint and at least 10 days prior to the date of the filing of the praecipe **to the party against whom judgment is to be entered** and to the party's attorney of record, if any. "

Kramers' attorney abandoned their case during the period in which judgment was entered, ran off with his retainer, and was subsequently disbarred. Kramers' were never notified per the above rule of the judgment's entry. Kramers were never notified that the judgment was "void ab initio" because the above rule had not been observed or that based on the above rule, they could have stricken the judgment, instead of paying the judgment. Ignorant of the above rule, Kramers paid the judgment. Not until years later did they self-educate themselves to understand that they

had paid an unconstitutional void judgment. Kramers are contesting Pennsylvania's refusal to strike the void judgment and open the underlying controversy, i.e. usury , which has never been decided on the merits, but instead on the basis of a void default. Kramers initiated this timely usury action within the applicable statute of limitations period of 4 years in Pennsylvania, 6 years in New Jersey, and of course within the time criteria for void judgments, namely that: the "judgment must be stricken **without regard to the passage of time.**"

Bottom line, the Prothonotary did not provide the Kramers **equal protection of the laws of Pennsylvania** (notice under Pa.R.C.P. 237.1) as required by the 14th Amendment. The resulting void judgment against Kramers is clearly **outlawed by the 14th Amendment.** Protections which the state provides to some must be provided to all. The 14th Amendment equal protection mandate is unequivocal and inescapable in the United States Constitution. There are no loop holes, no exceptions, no fine print, no constructions to be found in the 14th Amendment of the U.S. Constitution by which the states can short circuit around the state's obligation to never impose and to never give legal recognition to or show toleration for any occurrence of failures in their jurisdictions to provide equal protection of the laws, no matter how small or minor.

Void Judgment Tradition

From the beginning, from our country's founding, the courts were looked to as the protector of our rights and were expected to declare as "void" any

usurpation of those rights:

> "The complete independence of the courts of justice is peculiarly essential in a limited Constitution...The legislative authority.. ..shall pass no bills of attainder, no ex post facto laws, and the like. Limitations of this kind can be preserved in practice no other way than through the medium of courts of justice, whose duty it must be to declare all acts contrary to the manifest tenor of the Constitution **void.** Without this, **all the reservations of particular rights or privileges would amount to nothing....** There is no position which depends on clearer principles, than that **every act of a delegated authority, contrary to the tenor of the commission under which it is exercised, is void**..." Alexander Hamilton, Federalist Paper 78, 1787

It was anticipated that the Supreme Court of the United States would stand ready to wield the sword, declaring government acts "void" whenever a government entity exceeds its jurisdiction, as in the case at hand, to redress an unconstitutional action by the Commonwealth of Pennsylvania, which lapse in providing equal protection of the law the Supreme Court of Pennsylvania has now within the last 90 days let stand. The Supreme Court of Pennsylvania denied Kramers' Petition for Allowance of Appeal in the current case on Dec.3, 2008. While that court's thinking has not been disclosed, an excerpt from a recent opinion by Judge Saylor on that court shed's light on a changing view towards the function of declaring

declaring judgments void:

> "The problems engendered by the rule that laches cannot run against a 'void' judgment has been the subject of much thoughtful commentary. . . We note that while there are recent cases in which this court applie[d] the rule, . . the Supreme Court cases which fashioned the rule are **fairly old. The time may be ripe** for the Supreme Court to review whether the rule is still appropriate.....In sum, even within the framework of procedural rules that potentially allow an **invalid judgment** to be attacked after expiration of the limitation period that would otherwise apply, as a matter of procedural rulemaking I would likely favor giving preeminence to **validity over finality** only where the equities clearly favored the judgment debtor, such as where personal jurisdiction was lacking and it would be manifestly unfair to require the debtor to defend himself in a Pennsylvania court." M & P Management v. Williams, Supreme Court of Pennsylvania 594 Pa. 489; 937 A.2d 398; 2007

By such a view our current generation will not enjoy the same clear cut definitions of individual rights guaranteed to our grandfathers and grandmothers by traditional self policing function of the courts, which has reliably eliminated "void ab initio" unconstitutional judgments in the past. A bed rock legal tradition is now to yield to an innovation in individual rights, being henceforth defined as no more than discretion of the court:

> "[a] spirit of **innovation** is generally the result of a selfish temper and confined views. People will not look forward to posterity, who never look backward to their ancestors. Besides, the people of England well know, that the idea of inheritance furnishes a sure principle of conservation, and a sure principle of transmission; **without at all excluding a principle of improvement.**" "Reflections on the Revolution in France", Edmond Burke

What marginal improvement can be had by an innovative satisfaction rule, which renders valid ex post facto the figuratively 1/10th of one percent of all judgments which turn out to be void and unconstitutional? What increase in court efficiency outweighs the resulting sacrifice to the principles of law, the 14th Amendment, and individual rights? Pennsylvania's defendant protection against attorney malpractice, Pa.R.C.P. 237.1(a)(2)(ii), is probably the most enlightened and protective of such rules of court to be found throughout the United States. Because it involved exactly the malpractice for which the rule was put in place to prevent, the current case was a perfect test of its effectiveness. What social benefit is there to undercutting traditional enlightened protections by juxtaposing them to innovative entrapments such as the satisfaction of judgment rule (which we are contesting) designed to dupe the unsophisticated into defaulting that same enlightened defendant malpractice protection, because they may just not have known it existed or what the Prothonotary's job was, which is why in the end it failed to protect Kramers, the satisfaction of judgments rule acting to self defeat beneficial law.

Affirmation and Warrantee of Equal Protection of the Law

Every member of the Supreme Court of Pennsylvania and all the courts below it are bound by oath to the Constitution and by affirmation to upholding the equal protection clause of the 14th Amendment:

> "This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and **the judges in every State shall be bound thereby,** anything in Constitution or laws of any State to the contrary notwithstanding.
>
> The senators and representatives before mentioned, and the members of the several State legislatures, and all executive and **judicial officers**, both of the United States and **of the several States , shall be bound by oath or affirmation to support this constitution**...." Article VI, U.S. Constitution

The judiciary of each state, whether it likes the obligation or not, has no Constitutional authority without the warrantee to all persons within its jurisdiction of equal protection of its laws. And clearly in the current case the Pennsylvania Courts have admitted to the "error" that Petitioners were not given the equal protection of Pa.R.C.P. 237.1 as evident on the face of the record.

The Superior Court of Pennsylvania, in ruling that

the unequal protection of the law was permitted in Kramers' case, gave as its rational the fact that Kramers subsequently satisfied the judgment entered against them (Kramers were uninformed, however, of the flaw that the judgment was void and entered in violation of the equal protection clause). In other words in Pennsylvania an exception to the equal protection clause of the United States can be tolerated and made binding providing the party from whom the equal protection was deprived does not put up immediate resistance. In other words equal protection of the law in Pennsylvania is not a **warranteed** principle or **affirmation** of the Constitution, but appears to be an externally imposed burden which the Commonwealth would ignore within its jurisdiction, whenever it can find a way to do so. In other words Pennsylvania arbitrarily carves out limits and exceptions to the extent to which it is willing to obey the 14th Amendment. Kramers raise the question whether it is constit- utional, whether it wise to bend the Constitution and concede to the convenience of Pennsylvania a new precedent setting theory of allowing exceptions to the heretofore black and white clarity of the principle of equal protection of the law to which all Pennsylvania judges have taken an oath to uphold.

Lance v. Mann and Limits to Satisfaction of Judgments

The flaw in the logic of the Pennsylvania Courts over this issue is that they misapply a perfectly legitimate principle laid down in Lance v. Mann (1948), namely that satisfaction of judgment is the event of closure, the line beyond which private

litigators on the merits of underlying causes could not proceed any further in Pennsylvania courts. Satisfaction of judgment in Pennsylvania terminates further recourse to the courts by the litigators. But to apply the rule that satisfaction of a judgment ends all litigation to cases where a third party, the government, interfered, intervened, was culpable, and deprived one of the litigants of equal protection is a wholly different, unintended, perversion of the Lance v.Mann ruling. It forces the Lance v. Mann principle to apply like a square peg in a round hole to circumstances which Lance v. Mann never originally described or anticipated, namely extending Lance v. Mann to cover "void", unconstitutional judgments into which underlying causes of action can not and should not merge. In its original setting Lance v. Mann is a sensible limitation to litigation. As a twisted argument aimed at closure at the expense that unequal protection of the law will now be permitted, Lance v. Mann falls as an unconstitu- tional fabrication.

Thus by a contortion of the law in Pennsylvania, satisfaction of judgment becomes supreme law of the Commonwealth, supplanting the judicial oath to affirm equal protection of the law, such that equal protection of the law becomes a footnote technicality. The burden is on the litigant to now discover before satisfying a judgment that he or she has been deprived of equal protection by the state. Should the litigant be ignorant of the equal protecttion injury perpetrated on him or her by the Commonwealth and be entrapped and cowed into satisfying the imperative of the judgment, the right to equal pro- tection is defaulted under the supremacy of the satisfaction rule, and the

rule, and the judgment is ex post facto declared valid. What good is equal protection of the law to a litigant, which when the state deprives the litigant of that protection, the state is under no obligation to inform the litigant of the protection of which he has been deprived (Pa.R.C.P. 237.1 in this instance)? By this unfair and contorted logic the Commonwealth relieves itself of its culpability and its oath to provide equal protection of its laws, thereby substantially transforming the Commonwealth into an oasis, safe from the burdensome, meddling demands of the 14th Amendment of the U.S. Constitution.

No Merger into Void Judgmnents

Kramers have throughout this litigation asserted that a judgment can not be decoupled from its satisfaction. If a judgment is void because it is unconstitutional and entered without jurisdiction, if the judgment is a nullity, then the judgment's satisfaction is a nullity per traditional Pennsylvania law:

> "The learned judge granted the motion and struck from the records the judgment and decree as being "legal nullities and possessed of no efficiency whatever." **On three separate appeals to this court, in litiga- tion involving the validity of the judg-ment, we have declared it void and of no efficacy whatever.** We have also held that the deed and the receipt of the sheriff by the lien creditor were likewise of no force or validity. **"The sheriff's sale un- der the judgment," says Chief Justice GREEN in Smith's Estate, 194 Pa. 259, "was**

> **a void sale and the deed to the purchaser was a void deed. It not only conferred no title, it was a legal nullity. In other words, the judgment and all the subsequent proceedings were the same as if they had never taken place; they had no existence in any manner which the law could or would recognize."** Mutual Life Insurance Co.v. Tenan 139 Supreme Court of Pennsylvania 204 Pa. 332; 54 A. 172; 1903 Pa.

The new doctrine in the Commonwealth is that satisfaction has validity regardless of and independent of the sins of the underlying judgment, be they offenses against the Bill of Rights or the U.S. Constitution or sins of jurisdiction. Pennsylvania purports to make satisfaction the supreme law of Pennsylvania, regardless of whether the judgment being satisfied violated equal protection of the law, regardless of whether the judgment violated the supreme law of the United States:

> "Generally, the payment of a judgment and entry of satisfaction discharges the judgment.20P.L.E. Judgment 471. Because the law contemplates an end to litigation, further proceedings may not commence upon a judgment which has been satisfied. Lance v.Mann 360 Pa. 26, 29, 60 A.2d 35, 36 (1948) **Where a judgment has been satisfied, there no longer exists an obligation which may be opened or stricken, and all questions of liability and damages are deemed extinguished."** Wilk v. Kochara,

Superior Court of Pennsylvania, 436 Pa. Super. 258; 647 A.2d. 595; 1994.

Put another way the Commonwealth of Pennsyl- vania posits that rights violating, unconstitutional actions of a court always "merge" into the resulting void judgment, so long as the judgment is satisfied. By contrast other jurisdictions have long held:

> "A judgment which is wholly void is in legal effect no judgment at all and cannot operate as a **merger**, since it is subject to collateral impeachment at any time." Hamm v. Hamm, Court of Appeals of Tennessee, Western Section 30 Tenn. App.122; 204 S.W.2d 113; 1947.

> "A judgment void upon its face and requiring only an inspection of the record to demonstrate its invalidity is a mere nullity, in legal effect no judgment at all, conferring no right and affording no justification..... It does not terminate or discontinue the action in which it is entered, **nor merge the cause of action;**...".Pamelia C. Brown et al. Supreme Court of Tennessee, 198 Tenn. 600; 281 S.W.2d 492; 1955.

Satisfaction Obtained by Fraud or Mistake

Pennsylvania leaves a door ajar, leaves some lee way in case the satisfaction rule is applied too rigidly:

> "Satisfaction of a judgment, however, may be

> stricken where it has been obtained through **fraud or mistake**. Neustein v. Ins. Placement Facility of PA., 271 Pa.Super. 126, 129, 412 A.2d 608, 609 (1979). See also: Winfree v. Philadelphia Elec. Co., 520 Pa. 392, 395, 554 A.2d 485, 486 (1989)." Wilk v. Kochara, Superior Court of Pennsylvania, 436 Pa. Super. 258; 647 A.2d 595; 1994.

But to quote again the Superior Court of Pennsylvania opinion we are appealing:

> "An **error** in sending notice of an intent to file a default judgment does not ..nullify the satisfaction of the judgment..." Opinion, at 12a, Kubicka v. Kramer, 2008, Superior Court of Pennsylvania, No.1751 EDA 2007.

Are we to believe that an "**error**" is not a "**mistake**" per Nuestein above. And are we to believe the failure of the Pennsylvania court to uphold its affirmation under Article VI of the Constitution to protect all parties under its jur- isdiction equally with a Pa. R.C.P. 237.1 notice is not a violation of the 14th Amendment? Or are we to believe that subsequent failure of the court to notify Kramers that the judgment being paraded against them as valid was indeed "void ab initio", that such failure by the court was by contorted logic not an **entrapment or a deception or a fraud** per Neustein above? Or are we to believe that no clarification or warning to Kramers was in- cumbent on the court in view of the court's Constitutional affirmation to provide equal protection of the law?. Or are we to believe that when a litigant is told a certain demand is the judgment of a court, when in legal

reality it can not be so, that such a misdirection of authority is not a **fraud**?

14th Amendment Viewed Through a 10th Amendment Lens

Not only is the Commonwealth of Pennsylvania thwarting the 14th Amendment, but it is undermining the sovereignty of the individual American and the jurisdiction reserved to the people clearly stated in the more senior 10th Amendment:

> "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people."

"**Unequal** protection of the law" is not a power delegated to the United States by the Constitution. "**Unequal** protection of the law" is clearly prohibited by the 14th Amendment of the Constitution to the Commonwealth of Pennsylvania. Clearly the 14th Amendment, viewed through the lens of the earlier 10th Amendment, states that the only party in the Constitution who can authorize "Unequal protection of the law" is the "people". The only time "**Unequal protection of the law**", such as deprivation of a Pa.R. C.P. 237.1(a)(2)(ii) notice, is authorized is when the person, being so deprived, knowingly gives his or her informed waiver or consent. Under the Constitution in order for Pennsylvania to obtain the right to declare as binding the satisfaction of a void, rights depriving unconstitutional judgment, Pennsylvania must

demonstrate that the party fully understands that his or her payment and satisfaction of the judgment is a completely voluntary act, that the party fully understands that the judgment is not binding, because the judgment is a nullity and void, that the party fully understands the rights he or she is waiving, that the party has had access to council to advise fully about those rights.

As the record shows Kramers in this case satisfied the void judgment in 2001 and did not learn of their right to a Pa.R.C.P. 237.1(a)(2)(ii) notice or that the judgment they paid was not mandatory, but was void, until they had commenced litigation in 2005 (See page 4 of their October 27, 2005, pleading in Federal District Court). The Commonwealth of Pennsylvania can not maintain that satisfaction of void, unconstitutional judgments closes litigation without first demonstrating that the satisfaction was not coerced by a misconception that the satisfaction payment was mandatory, as it appeared to be, and without demonstrating that the party satisfying the judgment fully understood the rights they were waiving.. Otherwise the sovereignty and jurisdiction of the most important party to the U.S. Constitution, **The People,** is usurped in direct violation of the 10th Amendment which mandates the peoples' informed consent:

> .."Consent" that is the product of official intimidation or harassment is not consent at all. Citizens do not forfeit their constitutional rights when they are coerced to comply with a request that they would prefer to refuse."

Florida v. Bostick, Supreme Court of the United States, Opinion by J. Sandra Day O'Connor, 501 U.S. 429, 438; 115 L. Ed. 2d 389, 401; 1991

A Correct Perspective

In other jurisdictions, when faced with the question of whether a premature satisfaction of a judgment forecloses reopening litigation on account of constitutional rights that were violated, courts have not been impeded by the existence of the judgment's satisfaction:

"California Official Reports Summary

A general contractor brought an action alleging breach of a residential construction contract and seeking a personal judgment for the unpaid contractual balance and the enforcement of a mechanic's lien on the subject property. Defendant homeowners, in their answer, set forth the affirmative defenses of nonperformance and negligent performance and also cross-complained for damages on the same grounds. After denying defendant's timely demands for a jury trial, the matter was heard by the court and judgment was thereafter entered for plaintiff. **The amount of the judgment was paid by defendants** pending appeal in order to prevent further running of interest and to preclude threatened execution on the property and other of defendant's assets.

The Court of Appeal reversed, with directions that, upon appropriate motion by defendant

> homeowners, the trial court order restitution to defendants of the amount paid by them to satisfy the judgment, restitution to be made by plaintiff contractor on reasonable terms and conditions, pending retrial of the cause... The court also held that **the deprivation of the right to trial by jury was reversible error per se, without the need to demonstrate actual prejudice.**" Selby Constructors v. John L. McCarthy, Court of Appeal of California, Second Appellate District, Division Four, 91 Cal. App. 3d 517; 154 Cal. Rptr. 164; 1979

Implications for The Bill of Rights

Pennsylvania's disguised attack on the 10th and 14th Amendments has the potential to be a Trojan Horse. If "satisfied" void unconstitutional judgments are to made part of the Res Judicata Law ex post facto, entitled to Full Faith and Credit, what is to become of the Bill of Rights which has in the last half century been "incorporated" and "absorbed" into the law of each state under the umbrella of "the privileges and immunities of citizens of the United States" by force and authority of the 14th Amendment? Following the precedent being set here of supremacy of state law over the Constitution, in the future might not the greater domain of our Bill of Rights be impacted negatively by any variety of rules of court, and rules of merger, and rules for how protections are defaulted, traps to limit Miranda rights, etc., which the various states might invent? Might not theories about the non-existence of satisfied judgments be used to bar correction of unconstitutional rulings and memorialize beyond the reach of remediation all

manner of Bill of Rights and Constitutional violations? If allowed by a **denial of this Petition** to establish "satisfaction of a judgment" as the supreme of law within the jurisdiction of Commonwealth of Pennsylvania, to the disparagement of the supreme law of the United States and "equal protection of the law", is there not a risk of setting the country on a road back toward the age before 1860? Forgive our hyperbole about the importance of our case, but is there not a risk of eroding and repealing the 14th Amendment by a thousand cuts, by a thousand state rules and theories of court?

This is a Precedential Case

Fortunately, to the best of Kramers' knowledge, this is the first time the Pennsylvania courts have tried to apply their Lance v. Mann principle of satisfaction of judgments to include an actual truly void unconstitutional judgment, notwithstanding the Superior Court of Pennsylvania's designation of its opinion as Non-Precedential. All Lance v. Mann cases here to date in Pennsylvania, Neustein v. Ins. Placement Facility of Pa., Wilk v. Kochara, Winfree v. Philadelphia Electric, etc., have been cases in which litigants were contesting about "valid" judgments, judgments into which the causes of action had legitimately merged. It's not too late, precedent-wise, to keep Pennsylvania on the Constitutional track. Finality of just and valid judgments litigated fair and square is desirable. Finality of unjust void judgments defeats the law.

Usury

Allow Kramers a note, concerning their underlying

usury cause of action, since the Superior Court of Pennsylvania gave so much weight and emphasis to the final payment. "Appellants ..do not set forth facts that demonstrate that they were fraudulently induced into satisfying the judgment." (Opinion of the Superior Court at 11a) To summarize the usury in this case, if an acquaintance had loaned you an equivalent over time of $1400 and 23 years later it was inescapable that you had to pay that party a huge $60,000 because the court had so ordered it, then in the aftermath years of that payment wouldn't something seem to have been not quite right? Wouldn't it become plain, when the dust had settled, that if the court had ordered a payment of 3 or 4 times that running average balance of $1400 (a payment after 23 years of perhaps $4000 or $5000) that that would have seemed fair? But since the court ordered $60,000 in Kramers case, which was $55,000 too much and $55,000 too illegal (equivalent to $1400 compounded annually at a rate of 15% on over 23 years, a Wall Street coup, which Kramers fully documented in the trial court Com- plaint, "...Plaintiffs have submitted voluminous pleadings, including affidavits, charts, document- ation ...and other evidence..." Opinion, U.S. District Court at 53a.). It was an arbitrary and unjustified transfer by the Court of Common Pleas of some $55,000 of net worth from one family to another. Naturally the losing family, the Kramers, desire enforcement and protection of the usury law in this classic flagrant usury case. After all, what are the usury laws for? What is the non-

waivability of usury rights (41 P.S. § 408)* for, if the very act of paying usury in turn bars getting the money back? After all usury protection 41 P.S. § 408 passed in 1974 superceding the 1948 Lance v. Mann ruling. And certainly the losing family, the Kramers, do not want to find their day in court barred by res judicata being attributed to a void unconstitutional judgment in which the court interfered, short changing Kramers of equal protection of the law.

*41 P.S. § 408 of the PA usury act reads: "Notwithstanding any other law, the provisions of this act may not be waived by any oral or written agreement executed by any person."

Conclusion

Kindly instruct the Pennsylvania Courts to strike this "void ab initio" null judgment and its "void ab initio" null unconstitutional satisfaction, which was obtained from Kramers without their informed consent. Kindly enable Kramers to return to trial armed with a F.R.C.P. Rule 60(b)(5) motion lifting res judicata from the Court of Common Pleas judgment and satisfaction (the lost time in the interim not of Kramers doing).

Respectfully submitted,

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APPENDIX

NON-PRECEDENTIAL DECISION -
SEE SUPERIOR COURT I.O.P. 65.37
IN THE SUPERIOR COURT OF
PENNSYLVANIA
No. 1751 EDA 2007
Kurt H. Kramer; Maria E. Kramer,
Appellants
v.
Thomas Kubicka; Bonnie Kubicka,
Appellees
Appeal from the Order entered June 13, 2007, in the Court of Common Pleas of Bucks County, Civil, at No. 99-003721-13-1.
BEFORE: MUSMANNO, KLEIN and HUDOCK, JJ.
Memorandum: Filed March 17, 2008

This is an appeal from an order which denied a petition to strike a default judgment. We affirm. Between 1978 and 1993, Thomas and Bonnie Kubicka (Kubickas), who had been long-time friends of Kurt and Maria Kramer (Kramers), loaned the Kramers $28,700.00 at differing interest rates, and the Kramers signed notes for each loan, which indicated the rate of interest applicable on each instrument. The Kramers made interest-only payments on the loans to the Kubickas until March 24, 1994, after which point they stopped making payments and defaulted on their obligations under the notes. This case commenced on June 4, 1999, when the Kubickas filed a complaint in the Court of Common Pleas of Bucks County demanding that

the Kramers pay the total amount outstanding on the notes, plus interest, for a sum of $53,187.20. On or about July 18, 2000, after the Kramers failed to answer an amended complaint, the Kubickas sent notice to the Kramers' attorney indicating their intent to file a praecipe for default judgment against the Kramers. Notice of default judgment was not served upon the Kramers personally as required by Pennsylvania Rule of Civil Procedure 237.1(a)(2)(ii) (requiring notice of intention to file praecipe for default judgment to be sent directly to the party against whom judgment is to be entered, as well as to the party's attorney of record, at least ten days prior to the date of the filing of the praecipe for default judgment). The Kramers' attorney took no action regarding the notice of intention to file for default judgment, and the Kramers claim that they did not receive notice from their attorney regarding the impending Judgment..*

On September 15, 2000, the Kubickas filed a praecipe for default judgment against the Kramers in the amount of $57,199.99. On the same day, the trial court entered default judgment against the Kramers with damages assessed at $57,199.99, plus costs. Notice of the default judgment was mailed to the Kramers at their home address upon being entered September 15, 2000. The Kramers

* The Kramers' attorney was placed on inactive status by the Supreme Court of Pennsylvania on August 19, 2000.

admit to receiving the notice. Brief in Support of Petition to Strike, 3/2/07, at para.14, p. 15. On May 16, 2001, the Kramers issued a check to the Kubickas for $59,500.00 in satisfaction of the amounts owed, which check the Kubickas cashed on May 18, 2001. The Prothonotary's office marked the judgment as satisfied on July 3, 2001.

Several years later, on May 18, 2005, the Kramers filed a complaint in the United States District Court for the District of New Jersey claiming that the Kubickas violated New Jersey and Pennsylvania usury laws, as well as the federal Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.c. sections 1961-1968, and the Truth in Lending Act (TILA), 15 U.S.c. sections 1601-1667. They sought reimbursement of payments made and other damages stemming from the same underlying loan transactions described above. On June 9, 2006, the district court granted the Kubickas' motion for summary judgment and dismissed the Kramers' complaint in its entirety. The district court found that the Kramers' state law claims were barred because the Pennsylvania state court satisfaction of the judgment was res judicata, precluding the statutory claims. The court also found that the Kramers' RICO and TILA claims were barred by res judicata and otherwise time-barred. On January 30, 2007, the Kramers appealed the decision of the district court to the Third Circuit Court of Appeals.

On March 5, 2007, the Kramers filed a petition to strike the default judgment entered September 15, 2000, with the trial court of Bucks County and moved to stay their appeal in the Third Circuit pending a ruling on that petition. The Third Circuit denied the motion to stay and affirmed the dismissal of the Kramers' claims on March 13, 2007.**

On June 13, 2007, the trial court issued an order denying the Kramers' petition to strike the default judgment. The Kramers (hereafter Appellants) timely filed their notice of appeal on July 12, 2007. The trial court ordered Appellants to file a statement of matters complained of on appeal pursuant to Pennsylvania Rule of Appellate Procedure 1925(b), and Appellants timely complied.

Appellants raise the following issues on appeal:
1) whether the trial court erred by denying their

** The Third Circuit disagreed with the Kramers' argument that the default judgment was a nullity for failure of the Kubickas to provide prior notice and that their payment in satisfaction of the debt was, therefore, a predicate act. With respect to the RICO claim, the Third Circuit found that a "judgment entered by a court of competent jurisdiction does not fall within the definition of an 'unlawful debt' as de- fined by the RICO statute. As no court has declared the default judgment null, we continue to consider it valid." Kramer v. Kubicka, 2007 Pa. Lexis 5802, at *4-5 (3d Cir. March 13, 2007) (citations omitted).

petition to strike the default judgment because judgment was "void ab initio" when Appellees failed to provide Appellants notice of the impending default judgment more than ten days prior to entrance of judgment; 2) whether satisfaction of that judgment is, therefore, a nullity; 3) whether denying a petition to strike the default judgment violated the equal protection clauses of the Fourteenth Amendment of the United States Constitution and the Pennsylvania Constitution; and 4) whether the failure of a state court to correct a "known unequal application of its judgments in another jurisdiction" is a violation of the Fourteenth Amendment. Appellants' Brief, at 2-3.***

In their brief, Appellants also ask us to consider whether the Usury Law under 41 P.S. section 408 provides for striking or opening of usurious judgments. Appellants' Brief, at 2. Appellants, however, did not properly raise that issue in their 1925(b) statement, nor is their argument fully developed in their appellate brief. Failure to raise an issue in a court- ordered 1925(b) statement results in waiver of that issue. Pa.R.C.P. 1925(b); Commonwealth v. Salamone, 897 A.2d 1209, 1217 (Pa. Super. 2006). Appellants provide only a passing reference to usury when they raise a separate issue involving equal protection:

*** Appellants, in their brief, list several sub-issues supporting the four issues defined above. Appellants' relevant arguments will be addressed below.

> "To preserve and elevate the payment to status of satisfaction of a judgment when thejudgment itself is invalid by denying to strike that underlying "void ab initio" judgment is deprivation of Kramers' equal protection of the law, artificially interfering with and cutting Kramers off from their usury protections under Act 6 of 1974, 41 P.S. 408, and from their claims pending the validity of the default judgment in Federal Court. The payment of usury doesn't bar its recoupment."

Appellants' Statement per Rule 1925(b), 8/14/07, at 2. Indeed, we understand why the trial court, in outlining issues raised in Appellants' 1925(b) statement, did not describe a usury claim among those issues. Trial Court Opinion, 10/04/07, at 3 n.3. Therefore, the usury issue is waived. Al- though Appellants have waived their usury claim, we note that a consideration of such claim would not disturb our holding in this case. Even if we were to assume for the sake of argument that the satisfaction payment contained usurious interest, Appellants cite to no authority that allows the court to strike the satisfaction of judgment where the judgment was not satisfied through fraud, accident or mistake. See Appeals of W.S. Read, 17 A. 621, 622 (Pa.1889)(upholding satisfaction of judgments where judgments not satisfied through accident or mistake, or in furtherance of a design to bar usury; appellant had argued that the transaction was usurious in its origin and that a portion of the usury

was contained in the satisfied judgments) ; Globe Consumer Discount Company v. City Wide Paint Stores, Inc., 45 D & C.2d 330, 332 (Philadelphia Cty. 1966). As we discuss below, the satisfaction of judgment in this case was not obtained by fraud or mistake, nor was it obtained by accident.

This Court reviews a trial court's refusal to strike a judgment for an abuse of discretion or an error of law. Frontier Leasing Corporation v. Shah; 931 A.2d 676, 679 (Pa. Super. 2007). Similarly, when reviewing issues related to satisfaction of a judgment, the standard of review is whether the trial court abused its discretion. Gallagher v. Sheridan, 665 A.2d 485, 486 (Pa. Super. 1995). An abuse of discretion is not merely an error of judgment. Paden v. Baker Concrete Construction, Inc., 658 A.2d 341, 343 (Pa. 1995). Furthermore, it is insufficient to persuade the appellate court that it might have reached a different conclusion if, in the first place, charged with the duty imposed on the trial court below. Id.

> An abuse of discretion exists when the trial court has rendered a judgment that is manifestly unreasonable, arbitrary, or capricious, has failed to apply the law, or was motivated by partiality, prejudice, bias, or ill will. ... Where the record adequately supports the trial court's reasons and factual basis, the court did not abuse its discretion. Harman v. Borah, 756 A.2d 1116, 1123 (Pa. 2000) (citations omitted).

We first consider whether the trial court erred by denying Appellants' petition to strike the default judgment because judgment was allegedly "void ab initio" when Appellees failed to provide Appellants notice of the impending default judgment and whether satisfaction of that judgment is, therefore, a nullity. That is, Appellants assert that their satisfaction payment should not be considered properly entered because the judgment is void for failure to provide notice under Rule 237.1. Although Appellants did not petition the trial court to strike entry of satisfaction of judgment, that is the remedy they seek through their petition to strike the default judgment. Appellants' Brief, at 17. Therefore, we consider whether the court abused its discretion or committed error of law in denying Appellants' petition to strike the default judgment and satisfaction of judgment.

Nearly six decades ago, the Pennsylvania Supreme Court held, "[i]t is elementary that judgment settles everything involved in the right to recover, not only all matters that were raised, but those which might have been raised." Lance v. Mann, 60 A.2d 35, 36 (Pa. 1948). When a judgment is issued, the underlying "cause of action is merged in the judgment which then evidences a new obligation." Id. Furthermore, this Court has held that, upon satisfaction, the obligation and judgment are extinguished and further proceedings may not commence upon the underlying judg ment. Wilk v. Kochara, 647 A.2d 595, 596 (Pa. Super. 1994)

(holding that "because the law contemplates an end to litigation, further proceedings may not commence upon a judgment which has been satisfied.") (citing Lance, 60 A.2d at 36). The law must contemplate some end or closure to litigation, and proper satisfaction of judgment is this end. Id.

A court, however, may "properly strike the entry of satisfaction of judgment where the satisfaction is obtained by fraud or mistake." Nuestein v. Insurance Placement Facility of Pennsylvania, 412 A.2d 60S, 609 (Pa. Super. 1979). In Nuestein, this Court refused to strike an entry of satis- faction of judgment where appellant asserted that appellee committed insurance fraud and subverted the judicial process in obtaining the underlying judgment. Id. This Court held that it may not strike a properly entered satisfaction where "appellant does not allege that the satisfaction of the judgments. .. was obtained by fraud or mistake." Id. at 609 (stating that "there does not appear to be any reported court decision in Pennsylvania which has permitted the entry of satisfaction of judgment to be stricken on the basis of fraud occurring before judgment."). See also Winfree v. Philadelphia Electric Company, 554 A.2d 485, 486 (Pa. 1989) (holding that court could not strike a properly entered satisfaction where the only contention was that the underlying judgment was fraudulently obtained; "so long as the [Party] was not duped into satisfying the judgment, that judgment would not be stricken."). The focus is on the means used to acquire

the satisfaction, not those used to attain the original judgment.

On July 18, 2000, Appellees served notice of default judgment upon Appellants' attorney, but did not serve it upon Appellants personally, as required under Pennsylvania Rule of Civil Procedure 237.1(a)(2)(ii). On September 15, 2000, the trial court entered default judgment against the Appellants with damages assessed at $57,199.99 plus costs; on the same day notice of default judgment was sent to Appellants at their home address. Thereafter, on May 16, 2001, Appellants agreed to satisfy the judgment by issuing a check to Appellees for $59,500.00, and satisfaction of judgment was entered by the trial court on July 3, 2001.

Appellants argue that they were "duped" into making the May 16, 2001, payment that satisfied the default judgment because they did not receive from Appellees notice of default judgment under Pennsylvania Rule of Civil Procedure 237.1(a)(2)(ii) . Appellants' Brief, at 5, 11-12. They state:

> "How could Kramers have been "duped" in a worse conceivable way than to have the Bucks County Court put its imprimatur on a "void ab initio" judgment against them, to issue a nullity against them, to issue a fake judgment against them, which Kramers naturally took to

> be valid, as one would expect of lay members of the public . . . . Kramers would never have made the payment had they known the judgment was a nullity. "

Appellants' Brief, at 11. Appellants argue that because the judgment was non-compliant with Rule 237.1, "the satisfaction payment was solicited from the Kramer debtors by a deceptive and mistaken 'Full Faith and Credit' Certficate, and thus the satisfaction and judgment must still be striken off, if for no other reason, but for an improper and mistaken out of state solicitation for the satisfaction of a 'void ab initio' judgment." Appellants' Brief, at 12. Appellants further argue that a cause of action cannot merge into a "void ab initio" judgment and that satisfaction of a void judgment is a nullity. Id. at 2.

Appellants, however, do not set forth facts that demonstrate that they were fraudulently induced into satisfying the judgment. On the contrary, the facts demonstrate that there was no deception or mistake with respect to the settlement or satisfaction of the judgment. Eight months after they received notice of the default judgment, Appellants reached agreement with Appellees to satisfy the judgment with one payment of $59,500.00. Satisfaction of judgment was then entered on July 3, 2001. Appellants do not allege that they did not owe the monies paid to Appellees pursuant to their loan agreements, that their property was seized or garnished, or that the

satisfaction was obtained by fraudulent means. An error in sending notice of an intent to file a default judgment does not demonstrate fraud or nullify the satisfaction of judgment, especially as here where Appellants entered into a voluntary satisfaction and accord months after receiving notice of the default judgment. The Court should focus upon the means used to acquire the satisfaction, not to attain the original judgment. See Nuestein, 412 A.2d at 609; Winfree, 554 A.2d at 486. We conclude that the trial court did not err or abuse its discretion by denying Appellants' petition to strike the default judgment.****

This is not a case where fraud was used in the inducement of the satisfaction, as in Wilk, 647 A.2d at 596-97. In Wilk, a debtor appealed the denial of a petition to open or strike judgment because the creditor garnished funds to satisfy the judgment while the petition was pending. The

**** Appellants ask whether this case is a "first in- stance of a Court refusing to strike a 'void ab Initio' judgment, because payment was made?" Appel- lants' Brief, at 2. The trial court's dismissal of Appellants' petition to strike default judgment is not the first time a Pennsylvania court has refused to strike a satisfaction of judgment where appellant argues mistake or fraud in the underlying judgment, and not the satisfaction itself. See, e.g., Nuestein, 412 A.2d at 609; Winfree, 554 A.2d at 486.

judgment creditor argued that the petition to open or strike judgment was moot due to the satisfaction. This Court held that the petition to open the judgment was not moot, because appellant alleged that no moneys were due to appellee and that the satisfaction of the judgment was obtained by fraud. Id. at 597.

We note that Appellants could have filed a petition to strike judgment prior to the satisfaction of the judgment, but did not. They waited nearly six years from the satisfaction of judgment on July 3, 2001, to file the petition to strike judgment. Appellants claimed that they did not learn of the mistake until years later through their own research, when they "accidentally found in the law literature" reference to notice procedures under Pennsylvania Rule of Civil Procedure 237.1. Appellants' Brief, at 11. However, such circumstance does not excuse Appellants from having to file a petition to strike default judgment prior to satisfaction of that judgment, or render the satisfaction of the judgment void or defective.

Appellants rely on cases discussing the general rule that a petition to strike a judgment should be granted when a fatal defect, such as failure to properly notice defendants of pending default judgment in accordance with Pennsylvania Rule of Civil Procedure 237.1, appears on the face of the record. See Fountainville Historical Farm Association of Bucks County, Inc. v. County of

Bucks, 490 A.2d 845 (Pa. Super. 1985) (striking default judgment for improper notice of pending default judgment under Pennsylvania Rule of Civil Procedure 237.1); Erie Insurance Company v. Bullard, 839 A.2d 383, 387, 388 (Pa. Super. 2003) (finding that failure to comply with Rule 237.1 "is facially defective and cannot support a default judgment"; judgments granted in the face of fatal defects in the record are void ab initio and should be struck without regard for the timeliness of the petition). Those cases are distinguishable because, in each, the judgment had not been satisfied. As the trial court stated, "Erie does not upset the well settled law precluding a court from striking a properly satisfied judgment." Trial Court Opinion, 10/04/07, at 5-6.

Appellants' reliance on Demp v. Emerson Enterprises, 504 F.Supp. 281 (E.D.Pa. 1980), is also misplaced. Appellants' Brief, at 8.That case involved a confession of judgment contained in a lease agreement and improper execution of judgment where the judgment creditor executed on exempt social security funds. The district court denied the creditors' motion to dismiss the debtor's complaint seeking damages for defend ants wrongfully obtaining and executing a judgment by confession. Demp is factually and procedurally distinct from the instant case. It is a case involving a confession of judgment and improper execution of judgment. It is not a case in which the court was asked to strike a properly satisfied judgment that

was willingly entered into by a debtor.

Appellants also raise the issues of whether the denial of the petition violated the equal protection clauses of the Fourteenth Amendment of the United States Constitution and the Pennsylvania Constitution and whether the failure to strike judgment otherwise violated the Fourteenth Amendment. Appellants' Brief, at 2-3, 8. Appellants state:

> "Whenever a Prothonotary, a minister of the state, fails to follow the rules when entering judgments, automatically on the record some litigant is denied equal protection of those rules and laws, and thus automatically there occurs a violation of the equal proection clause of the 14th Amendment." Id. at 8-9.

They also claim that the court failed to correct a "known unequal application of its judgments in another jurisdiction" in violation of the Fourteenth Amendment. Appellants' Brief, at 2-3. Appellants are mistaken that the trial court's denial of their petition to strike judgment denied them equal protection or due process under the Constitutions of the United States and Pennsylvania. They cite to no case law or authority that Appellees' failure to provide notice of pending default judgment or the trial court's denial to strike the default judgment and satisfaction was a deprivation of constitutional rights. As the trial

court pointed out, Appellants could have utilized the proper recourse for challenging the entry of default judgment by petitioning to strike the judgment prior to satisfaction. Trial Court Opinion, 10/04/07, at 4. Instead, Appellants voluntarily satisfied the judgment with Appellees ten months after default judgment was entered. Accordingly, we affirm the order of the trial court.

Order affirmed.

Judgment Entered.
by Prothonotary

In The Supreme Court of Pennsylvania
Middle District
Thomas Kubicka and Bonnie Kubicka,
Respondents
v.
Kurt Kramer and Maria Kramer,
Petitioners
No. 243 MAL 2008
Petition for Allowance of Appeal from
the Order of the Superior Court

ORDER

Per Curiam
And Now, this 7th day of October, 2008, the Application for Post-submission Communications and the Petition for Allowance of Appeal are hereby Denied.

SEAL

In The Supreme Court of Pennsylvania
Middle District
Thomas Kubicka and Bonnie Kubicka,
Respondents
v.
Kurt Kramer and Maria Kramer,
Petitioners
No. 243 MAL 2008

ORDER

Per Curiam
And Now, this 3rd day of December, 2008, the Application for Reconsideration is hereby Denied.

SEAL

In The Court Of Common Pleas of Bucks County
Civil Division
Thomas Kubicka and
Bonnie Kubicka
Vs
Kurt Kramer and
Maria Kramer

OPINION

Kurt and Marie Kramer have appealed our Order of June 12, 2007 denying their Petition to Strike a default judgment which was entered against them on September 15, 2000. We issue this opinion in support of our decision. The facts of this case are not in dispute. They are as follows:

Kurt and Marie Kramer (hereinafter "Defendants") are a married couple who had a longstanding personal relationship with Plaintiffs Thomas and Bonnie Kubicka (herein after "Plaintiffs"). Between 1978 and 1994, Plaintiffs made periodic monetary loans to Defendants at varying rates of interest. These loans were memorialized in signed notes which indicated the rate of interest on each instrument. Thereafter, Defendants defaulted on their obligations under these notes by failing to make payments.

On June 4, 1999, Plaintiffs filed an action in assumpsit against Defendants demanding payment on the notes and interests accrued. In response to Defendants' preliminary objections, Plaintiffs filed an Amended Complaint on January 31, 2000. Defendants failed to answer the Amended Complaint. As a result, on or about July 18, 2000, Plaintiffs sent

notice to Defendants' attorney, Anthony Bruneio, indicating their intent to file a praecipe for default judgment against Defendants.* On September 15, 2000, in response to Defendants' inaction, Plaintiffs filed a praecipe for default judgment against Defendants in the amount of $57,199.99. According to the Docket, judgment was entered on the same day and notice of judgment was sent to Defendants' address. Defendants admit to receiving this notice. (Defendants' Brief in Support of Petition to Strike, If 15) On May 16, 2001, Defendants issued Plaintiffs a check for $59,500 marked "accord and satisfaction", which Plaintiffs accepted. The Prothonotary's office marked the judgment as satisfied on July 3, 2001.

In May of 2005, almost five years after our entry of judgment, Defendants commenced a usury and civil RICO action in the Federal District Court of New Jersey stemming from the same underlying loan transactions. In a Letter Opinion and attached Order dated June 9, 2006, the District Court granted Plaintiffs' Motion for Summary Judgment and dismissed the Complaint in its entirety. The Court explained that Defendants' state law claims were barred by res judicata because the parties were identical to the previous action, the case involved the

* On August 19, 2000, Mr. Bruneio was placed on the inactive status list by the Pennsylvania Bar Association. Defendants assert that they did not receive-any notice from Mr. Bruneio with respect to the impending judgment. (Defendants' Brief in Support of Petition to. Strike, pg. 15)

same underlying transactions, and the prior case concluded in a binding judgment.

On January 30,2007, Defendants appealed the decision of the District Court to the Third Circuit Court of Appeals on the grounds that the default judgment entered in the Bucks County Court of Common Pleas was void ab initio for Plaintiffs' failure to send a notice of default judgment directly to Defendants more then ten days prior to the entrance of judgment as required by Pa. R.CP. 237.1. After the submission of briefs, Defendants moved to stay the appeal pending a ruling on the Petition to Strike issue here. However, by per curiam Opinion and attached Order dated March 13, 2007, the Third Circuit denied Defendants' Motion to Stay and affirmed the dismissal of Defendants' claims.

After reviewing the Petition and all responses thereto, the Honorable Kenneth G. Biehn denied Defendants' Petition to Strike Judgment. ** Following the decision of Judge Biehn Defendants filed this timely appeal. Defendants raise two relevant issues in their Statement of Matters Complained.*** These issues are summarized

** The Honorable Judge Kenneth G. Biehn retired July 5, 2007, and this case was assigned to the undersigned.

as follows:

1. The default judgment is "void ab initio" because Plaintiffs failed to give notice of the impending default judgment against Defendants more then ten days prior to the entrance of judgment as required under Pa.R.C.P. 237.1(a)(2)(ii).

*** Defendants asserted four additional issues: 1) Denial of Defendants' Petition to Strike Judgment is a deprivation of Defendants' equal protection of the law; 2) Plaintiff's service of notice of the impending default judgment to Defendants' attorney impaired Defendants' due process rights where the Prothonotary failed to take into account Defendants' attorney's suspension from practice; 3) Subsequent Federal Court rulings which relied on the void ab initio default judgment in dismissing Defendants' claims, cannot themselves act as res judicata barring Defendants' Petition to Strike the void ab initio judgment; and 4) Bucks County Court of Common Pleas is the proper jurisdiction to hear the Petition to Strike Judgment We mention these issues only to say they are either irrelevant or inapplicable to this Court's decision to deny Defendants' Petition to Strike Judgment.

2. Defendants' "accord and satisfaction" payment cannot be considered satisfaction of judgment where the underlying judgment is "void ab initio."

We discuss each issue below.

I. Plaintiffs' failure to give Defendants notice of an impending default judgment under Pa. R.C.P. 237.1 (a)(2)(ii) does not act to void the judgment where Defendants previously satisfied the entered judgment with a personal check.

In their Brief in Support of Petition to Strike judgment, Defendants argued that. under Erie v. Bullard, 839 A.2d 383 (Pa. Super. 2003), Plaintiffs' failure to give notice under Pa.R.C.P. 237.1(a)(2)(ii) constituted a fatal defect in the record which voided the subsequent judgment in spite of Defendant having previously satisfied the judgment obligation. While we agree with Defendants' contention that improper notice under Rule 237.1 is a potentially fatal defect on the record, we disagree that this potentially fatal defect could act to void a properly satisfied judgment and find that the properly satisfied judgment can not be stricken.

Under Pennsylvania law.it is well settled that judgment forecloses all aspects of the right to recover, "not only all matters that were raised, but those which might have been raised". Lance v. Mann, 60 A.2d 35, 36 (Pa. 1948). Where a judgment is issued, the underlying cause of action becomes

merged with it to create a new obligation. Id. Upon satisfaction the obligation and judgment are extinguished and further proceedings may not commence upon the underlying judgment. Wilk v. Kochara, 647 A.2d 595, 596 (Pa.Super.1994). Thus, where a judgment has been satisfied. "there no longer exists an obligation which may be opened or stricken, and all questions of liability and damages are deemed extinguished". Id.

The reason for this rule is clear. If this Court were to permit monies collected under properly satisfied judgments to be repaid or reclaimed in a new suit, it would lead to indefinite and endless legal proceedings. Wilk v. Kochara, 647 A.2d 595, 596 (Pa.Super.Ct.1994) (citing Lance, 60 A.2d at 36.) Instead, the law must contemplate some end or closure to litigation. Id. A proper satisfaction of judgment**** is this end.

In the instant case, Defendants received notice of the default judgment in or about September of 2000. At any point thereafter, Defendants could have filed a Petition to Strike Judgment. They did not. Instead. Defendants acted to satisfy the judgment in May of 2001 by issuing Plaintiffs a personal check marked "accord and satisfaction". Plaintiffs accepted

**** The rules governing proper satisfaction of judgment are discussed in detail in section two.

this check and the judgment was marked as satisfied on July 3,2001. Thus, under Pennsylvania law, the obligation was properly satisfied and the underlying judgment ceased to exist, leaving no Judgment which this Court could properly strike. As a result, we properly denied Defendants' Petition to Strike Judgment.

As mentioned above, Defendants rely on Erie v. Bullard to conclude that Plaintiffs' failure to notify Defendants pursuant to Pa. R.CP. 237.1 (a)(2)(ii) voids the subsequent judgment regard-less of whether the judgment obligation has been satisfied. However, the factual posture of Erie is largely different from the instant case. In Erie, Defendant Bullard petitioned to Open and Strike Entry of Default Judgment for, among other things, failure to comply with notice requirements under Rule 237.1. Erie v. Bullard, 839 A.2d 383 (Pa. Super. 2003). The judgment at issue re- mained unsatisfied. In choosing to reverse the lower court's decision upholding the judgment, the Court reiterated the standard for striking judg- ment, stating that "a petition to strike a default judgment should be granted where a fatal defect or irregularity appears on face of record". Id. at 386. Applying this standard, the Court held that "a record that reflects a failure to comply with Rule 237.1 is facially defective and cannot support a default judgment". Id. at 287. In addition, the Court concluded that judgments granted in the

face of fatal defects in the record were void ab initio and should be struck without regard for the timeliness of the petition. Id. at 388.

Defendants assert that the above language conclusively establishes that no event or passage of time can act to bar Defendants from striking a judgment which was entered without proper notice under Rule 237.1. We disagree. Erie does not upset the well settled law precluding a court from striking a properly satisfied judgment. The factual differences between Erie and the instant case make Erie inapplicable to our decision in this matter. First, and most importantly, the Court in Erie was not asked to strike a properly satisfied judgment. Instead, the judgment at issue in Erie remained outstanding. As a result, the holding of Erie has no bearing on the rules affecting properly satisfied judgments. Further, because judgments are traditionally extinguished upon satisfaction, we can assume that Erie's discussion of "void ab initio judgments", was inherently only a reference to judgments which still exist for want of satisfaction.

Finally, Defendants cite Demp v. Emerson Enterprises, 504 F.Supp. 281 (E.D.Pa. 1980) as an example of a satisfied judgment being stricken where proper notice was not provided to the Defendant prior to the entrance of judgment. Defend- ants' reliance on Demp is misplaced. In Demp, the Federal Court held that an entry and satisfaction of a confessed judgment

was unconstitutional where the confessed debtor did not intentionally, knowingly, and voluntarily waive her constitutional right to notice and hearing before signing a lease containing a confession of judgment provision. Id. While proper notice was an issue in Demp, the factual differences between Demp and the matter before this Court make the holding inapplicable to our determination. First, Demp involved a confession of judgment which, as Defendants note, encompasses a distinct area of Pennsylvania law, inapplicable to default judgments. Further, the Court in Demp was asked to consider an improper execution of judgment by Plaintiff which ostensibly prevented the debtor from challenging the underlying judgment. Again, this is not the case in the matter before this Court where Defendants willingly satisfied the judgment by personal check. Finally, the Federal Court was not asked to strike a previously satisfied judgment, but instead chose to ignore the judgment for purposes of res judicata. In light of these factual differences, we disagree with Defendants' application of Demp to the instant case.

II. This Court properly determined that Defendants' "accord and satisfaction" payment to Plaintiffs was a properly entered satisfaction of judgment thus precluding us from granting Defendants' Petition to Strike Judgment.

Though Defendants have not petitioned to strike the entry of satisfaction of judgment, Defendants do assert that their "accord and satisfaction" payment should not be considered a properly entered satisfaction where the judgment is void for failure to provide notice under Rule 237.1. We disagree with this assertion and find that a satisfaction of judgment can not be stricken absent evidence showing that the satisfaction was attained through fraud or mistake.

It is well settled that a court may "properly strike the entry of satisfaction of judgment where the satisfaction is obtained by fraud or mistake",*****

*****Pennsylvania Courts apply a slightly different standard where a judgment is wrongfully satisfied through execution. In Wilk v. Kochara, 647 A.2d 595, 597 (pa.Super.1994), Leasor attempted to make Leasor' s Petition to Strike Judgment moot by seizing Leasee' s property in order to satisfy the judgment. The Court held that such a satisfaction did not render the Petition moot, stating that a judgment creditor may not execute judgment by "unorthodox means and thereby prevent debtor from challenging either the judgment or means of obtaining satisfaction thereof". Id. However, the case before this Court involves a voluntary satis- faction of judgment, making an application of the above standard immaterial to our determination.

Nuestein v. Insurance Placement Facility, 412 A.2d 608 (Pa. Super. 1979). Thus, determining whether a satisfaction has been properly entered requires an analysis of the means used to acquire the satisfaction, not those used to attain the original judgment. Id. For example, in Neustein, the Superior Court of Pennsylvania refused to strike an entry of satisfaction of judgment where Defendant insurance company asserted that Plaintiff committed insurance fraud and ostensibly subverted the judicial process in obtaining the underlying judgment. See. Id. In holding that "a court may not strike a properly entered satisfaction", the Court reasoned that where "appellant does not allege that the satisfaction of the judgment. .. was obtained by fraud or mistake, the satisfaction cannot be stricken". Id. at 609.

The Pennsylvania Supreme Court came to a similar conclusion in Winfree v. Philadelphia Electric Company, 554 A.2d 485 (1988). Similar to Neustein, Appellant petitioned the court to Strike an Entry of Satisfaction of Judgment alleging that they were defrauded by the actions of appellee leading to the underlying judgment. See. Id. Relying on Neustein, the Court focused solely on the means used to obtain satisfaction, stating that "so long as the [Party] was not duped into satisfying the judgment, that judgment would not be stricken". Id. at 486. Accordingly, the Court held it could not strike a properly entered satisfaction where Appellant's only contention

was that the underlying judgment was fraudutently obtained. Id. at 486.

In the instant ease, Defendants, like their counterparts in Winfree and Neustein, fail to directly attack the satisfaction itself and instead focus on the entrance of underlying judgment. Because Defendants set forth no facts indicating they were "duped" or fraudulently induced into satisfying the judgment, this Court detennined that the satisfaction of judgment was properly entered and should not be stricken.

Thus, for all of the above reasons, our Order of June 12, 2007 denying Defendants' Petition to Strike Judgment was appropriate and this appeal is without merit.

By THE COURT

Susan Devlin Scott

10/3/2007

In The Court Of Common Pleas
Bucks County, Pennsylvania
Thomas Kubicka and Bonnie Kubicka
507 Freedom Drive, Yardley, PA 19067
v.
Kurt Kramer and Maria Kramer
161 Pine Tree Rd, Bloomingdale, N.J. 07403
Civil Action - Law
CASE NO.99-003721-13-1

Appellant Statement per Pa.R.A.P. Rule 1925(b}

Appellants in this case, Doc.No.1999-03 721, are appealing the Bucks County Court of Common Pleas order of June 12, 2007, denying their Petition to Strike the ministerial entry by the Bucks County Prothonotary of a default judgment against Appellants on September 15,2000. Because there was no opinion accompanying the order, Appellants are at a handicap to discern the reasons for the order of denial. Appellants request leave to amend or add to this statement, if appropriate, in response to any forthcoming opinion from the Court. Initially Appellants present the following concise statement of issues to be preserved as a basis of their appeal:

l) The default judgment was "void ab initio" for failure by Kubickas to provide Kramers due process per PaR.C.P. 237. 1 (a)(2)(ii) (Erie v. Bullard) as is apparent upon the face of the record.

2) Denial of the Petition to Strike the "void ab initio" judgment, to which neither the passage of time nor laches are a defense, was a deprivation of Kramers' equal protection of the law.

3) Kubickas' service of a default warning to Kramers' attorney was flawed because the Prothonotary did not take into account the suspension of that attorney from the practice law and thereby further impaired Kramers' due process rights. Of course, even had the attorney not been suspended, the requirements of Pa.R.C.P. 237. 1 (a)(2)(ii) were still not met and the judgment would still have been "void ab initio" for failure to serve Kramers directly.

4) Kramers' debt payment to Kubickas subsequent to entry of the "void ab initio" judgment was not a valid satisfaction of a judgment, but was, like the judgment, a nullity, and the payment is not a bar to striking the judgment. Legally the payment was an "accord and satisfaction" agreement. To pre- serve and elevate the payment to status of satis- faction of a judgment when the judgment itself is invalid by denying to strike that underlying "void ab initio" judgment is deprivation of Kramers' equal protection of the law, artificially interfering with and cutting Kramers off from their Usury protections under Act 6 of 1974,41 P.S. 408, and from their claims pending the validity of the

default judgment in Federal Court. The payment of usury doesn't bar its recoupment.

5) The rulings by the Federal Court, submitted with Kubickas' brief: are dependent rulings, erroneously dependent upon the Bucks County "vold ab initio" default judgment as res judicata to bar Kramers' claims in Federal Court- Those Federal rulings can not, in turn by circular logic and referral back, become themselves res judicata barring Kramers' Petition to Strike that void default judgment upon which they depend. The circumstance that those (after the fact) Federal rulings now depend on that void default judgment can not make that default judgment to have been retroactively valid prior and before those dependent Federal rulings existed. The Federal Appeals Court, on notice that a petition to strike was pending in the Bucks County Court, made clear their ruling was to be subordinate to the Bucks County Courts' review by stipulating in their opinion, "... as no court has declared the (Bucks County) default judgment null. .. ", thereby anticipating and leaving the door open for Kramers to make a FRCP Rule 60(b)(5) motion in Federal Court, if Kramers' petition to strike were to succeed.

6) Recourse to the Bucks County Court to strike the "void ab initio" judgment is a necessary right o preserve equal protection of the law, and protection

of Pa.R.C.P. 237. 1 (a)(2)(ii) in particular, for the Kramers both within and without Pennsylvania. As the original forum the Bucks County Court must be available, since it is the ultimate arbiter of its own jurisdictional issues and the validity of it's own judgments (in the absence, of course, of laws to the .contrary such as Federal bankruptcy stay authority) .

We affirm that all facts in the above arguments are true to the best of our knowledge.

Date 8/8/07

Kurt Kramer, pro se

Maria Kramer, pro se

In The Court of Common Pleas
Of Bucks County
Civil Action - Law
No. 99-3721-13-1
Thomas Kubicka and Bonnie Kubicka
vs.
Kurt Kramer and Maria Kramer

ORDER

And now, this 12th day of June 2007, upon consideration of Defendants' Petition to Strike Judgment, Plaintiffs' response thereto, and the parties' memoranda of law, it is hereby Ordered and Decreed that said petition is Denied an Dismissed.

By The Court
Kenneth G. Biehn, J.

ATTESTATION

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF BUCKS

Docket #199903721-13-1

SS: Thomas Kubicka & Bonnie Kubicka -vs-
Kurt Kramer & Maria Kramer

I, R. Barry McAndrews, President Judge of the Court of Common Pleas of the County aforesaid, in the said Commonwealth, do hereby certify that the said Stella F. Best, by whom the attached Judgment & Docket Entries was made, was, at the time of so making same, and is now the Prothonotary / Clerk of said Court, duly commissioned and qualified; To all whose acts as such, full faith and credit are and out to be given,As well in courts of judicature as elsewhere; that the seal thereto annex is the seal of the said court; and that the said ATTESTATION is in due form of law, and made by the proper officer.

Dated this 3rd day of January, 2001

R.Barry McAndrews
President Judge

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF BUCKS

I, Stella F. Best, Prothonotary / Clerk of the Court of Common Pleas, in and for the said Court, do certify that the Honorable R. Barry McAndrews, by whom the foregoing ATTESTATION was made and who has thereunto subscribed his name was, at the time of making thereof, and still is, President Judge of the Court of Common Pleas, in andfor said County, duly commissioned and qualified; To all whose acts as such, full Faith and Credit are

and ought to be given, as well in courts of judicature as elsewhere. In testimony whereof, I have hereunto set my hand and affixed the Seal of said Court, this 4th day of January, 2001.

Stella F. Best, deputy
Prothonotary / Clerk,
Civil Division

SEAL

Kashkasbian & Assoc. by: Joseph T. Kwak, Esq.
Attorney LD. No. 61303 Bucks County
Office Center 1240 Route 413
Bristol, PA 19007
215-781-3950
IN THE COURT OF COMMON PLEAS
BUCKS COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW
CASE NO.99-003721-13-1
Thomas Kubicka and Bonnie Kubicka
507 Freedom Drive, Yardley, PA 19067
v.
Kurt Kramer and Maria Kramer
161 Pine Tree Rd, Bloomingdale, N.J. 07403
CERTIFICATION OF SERVICE
OF PRAECIPE TO ENTER DEFAULT
JUDGMENT

I, Joseph J. Kwak, Esquire, hereby certify that a true and correct copy of the attached Notice of Intention to Enter Default Judgment was served by first class mail to Anthony C. Bruncio, Esquire, Attorney for defendants, Bruneio Law Offices, 219 North 7th St. Allentown, PA, as is exhibited in the Certificate of Mailing attached to the Notice of Intention to Enter Default Judgment.

Respectfully submitted,
Joseph J. Kwak, Esq.
Attorney for Plaintiffs

BEST AVAILABLE COPY

U.S. POSTAL SERVICE **CERTIFICATE OF MAILING**

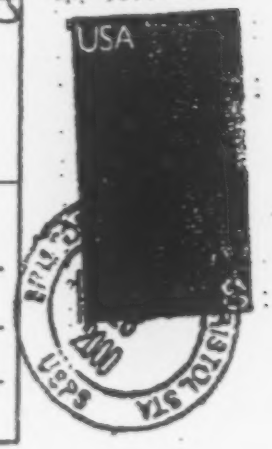
MAY BE USED FOR DOMESTIC AND INTERNATIONAL MAIL, DOES NOT PROVIDE FOR INSURANCE — POSTMASTER

Received From: KASHKASHIAN & ASSOCIATES
Joseph J. Kwak, Esq.
1240 Route 413
Bristol, PA 19007

One piece of ordinary mail addressed to:
Anthony C. Bruneio, Esq.
Bruneio Law Offices
219 North Seventh St.
Allentown, PA 18102

PS Form 3817, Mar. 1989

Affix fee here in stamps or meter postage and post mark. Inquire of Postmaster for current fees.



Kashkasbian & Assoc. by: Joseph T. Kwak, Esq.
Attorney LD. No. 61303 Bucks County
Office Center 1240 Route 413
Bristol, PA 19007
215-781-3950
IN THE COURT OF COMMON PLEAS
BUCKS COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW
CASE NO.99-003721-13-1
Thomas Kubicka and Bonnie Kubicka
507 Freedom Drive, Yardley, PA 19067
v.
Kurt Kramer and Maria Kramer
161 Pine Tree Rd, Bloomingdale, N.J. 07403
To: Kurt Kramer and Maria Kramer, Defendants
Date of Notice: July 18, 2000

Important Notice

You are in default because you have failed to enter a written appearance personally or by an attorney and file in writing with the court your defenses or objections to the claims set forth against you. Unless you act within ten days from the date of this notice, a judgment may be entered against you without a hearing and you may lose your property or other important rights. You should take this notice to a lawyer at once. If you do not have a lawyer or cannot afford one, go to or telephone the following office to find out where you can get legal help: Bucks County Bar Association, 135 East State Street, P.O.Box 300, Doylestown, PA 18901-0300, 215-348-9413

IN THE COURT OF COMMON PLEAS
BUCKS COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW
CASE NO. 99-003721-13-1
ASSESSMENT OG DAMAGES

1. Sum requested by Complaint Filed June 4, 1999	$53,187.20
2. Interest at 6% per annum from Date of filing	$ 4,012.79
3. Total Judgmant	$57,199.99

Respectfully submitted
Joseph J. Kwak, Esquire
Attorney for Plaintiffs

United States Court of Appeals
The Third Circuit
No.06-3355
Kurt H. Kramer; Maria E. Kramer, Appellants
v.
Thomas Kubicka; Bonnie Kubicka
(D.C. No. 05-cv-02621)

Present: Sloviter, Mckee, and Ambro
Circuit Judges

1. Motion by Appellant to Stay Appeal Submitted on merits 01/30/07

ORDER

The forgoing Motion by Appellant to Stay Appeal is denied.

By the Court
Dolores K. Sloviter
Circuit Judge

United States Court of Appeals
The Third Circuit
No.06-3355
Kurt H. Kramer; Maria E. Kramer, Appellants
v.
Thomas Kubicka; Bonnie Kubicka
On Appeal from the United States District Court for the District of New Jersey
(D.C. No. 05-cv-02621)
District Judge: Honorable William J. Martini
Submitted Under Third Circuit LAR 34.1(a) Jan.30, 2007
Before: Sloviter, Mckee, and Ambro
Circuit Judges

Judgment:

This cause came on to be heard on the record from the United States District Court for the District of New Jersey and was submitted pursuant to Third Circuit LAR 34.1(a). On consideration whereof, it is now here

ORDERED AND ADJUDGED by this Court that the judgment of the District Court entered June 9, 2006 be and the same is hereby affirmed. Costs taxed against the Appellant. All of the above in accordance with the opinion of this Court.

United States Court of Appeals
The Third Circuit
No.06-3355
Kurt H. Kramer; Maria E. Kramer, Appellants
v.
Thomas Kubicka; Bonnie Kubicka
On Appeal from the United States District Court for the District of New Jersey
(D.C. No. 05-cv-02621)
District Judge: Honorable William J. Martini
Submitted Under Third Circuit LAR 34.1(a) Jan.30, 2007
Before: Sloviter, Mckee, and Ambro
Circuit Judges
Filed: March 13, 2007)

OPINION

PER CURIAM.

Appellants Kurt and Maria Kramer, proceeding pro se, appeal the District Court's entry of summary judgment in favor of Appellees, Thomas and Bonnie Kubicka. For thereasons that follow, we will affirm.

Appellants are a married couple who had a long-standing personal relationship with Appellees, also a married couple. Between 1978 and 1993, Appellees made periodic loans to Appellants, total- ing $28,700. Appellants signed a note for each of the loans, which were made at a range of interest

rates. Appellants made interest -only payments on these notes until March 1994, at which point they stopped making payments entirely. In February 1998, they instituted a bankruptcy action, which was dismissed in May 1999 for failure to present a workable plan. The following month, Appellees filed an action against Appellants in the Court of Common Pleas in Bucks County, Pennsylvania demanding the total outstanding on the notes plus interest, for a sum of $53,187.20. According to Appellants, after their attorney failed to file an answer, default judgment was entered against them on September 3, 2000. On May 16, 2001, Appellants wrote a check to Appellees for $59,500. The check was cashed on May 18, 2001. Satisfaction was entered in Pennsylvania on July 3, 2001 and in New Jersey on August 7, 2001.

On May 18, 2005, Appellants initiated this lawsuit in the United States District Court for the District of New Jersey. In their complaint, Appellants allege violations of New Jersey and Pennsylvania usury laws, the federal Truth in Lending Act ("TILA"), 15 U.S.C. 1601 etc, and the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C.1961 et seq. Appellees moved to dismiss the complaint on a number of grounds, including expiration of the statute of limitations. Appellants moved for summary judgment. The District Court converted Appellees'

motion to dismiss to one for summary judgment and granted it, holding that Appellants' state law claims were barred by res judicata, and that their federal claims, to the extent they were not also barred by res judicata, were time-barred. AppeIIants filed the instant appeal.

We have jurisdiction over this appeal pursuant to 28 U.S.C. ~ 1291. We review a district court's grant of summary judgment de novo. Pennsylvania Coal Ass'n v. Babbitt, 63 FJd 231, 236 (3d Cir. 1995). Summary judgment is proper only if it appears "that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c); Carrasca v. Pomeroy, 313 F.3d 828, 832-33 (3d Cir. 2002).

The District Court held that both Appellants' RICO and TILA claims were time- barred. We agree. As the District Court noted, TILA claims are subject to a one-year limitations period, 15 U.S.C. 1640(e), and RICO claims to a four-year limitations period. See Agency Holding Corp. v. Malley-Duff & Assocs., Inc., 483 U.S. 143, 156 (1987). We have held that a RICO claim accrues when a plaintiff knew or should have known of the injury alleged. See Prudential Ins. Co. orAm. v. U.S. Gypsum Co., 359 F.3d 226, 233 (3d Cir. 2004). The injury Appellants complain of is the alleged collection of an "unlawful debt" as defmed by 18 U.S.C. 1961(6).

We agree with the District Court that the last payment that could so qualify was made by Appellants in 1994, and therefore does not satisfy the four-year limitations period.

Appellants contest this conclusion, relying on their argument that the default judgment is void ab initio due to Appellees' failure to serve them personally, in addition to serving their attorney, as required by Pa. R. Civ. P. 237.1 (a)(2)(ii). See Erie Ins. Co. v. Bullard, 839 A.2d 383, 387 (Pa. Super. Ct. 2003). Because they claim that the default judgment is therefore a nullity, they maintain that their payment of$59,500 should also be considered a predicate act. We disagree. A judgment entered by a court of competent jurisdiction does not fall within the defInition of an "unlawful debt" as defIned by the RI CO statute. See 18 U. S.. C. S 1961 (6). As no court has declared the default judgment null, we continue to consider it valid.

With respect to Appellants' state law claims, because we affirm the District Court's dismissal of Appellants' federal claims, we conclude that the District Court could have declined to exercise supplemental jurisdiction over these claims. See 28 U.S.C. 1367(c)(3); see also Growth Horizons, Inc. v. Delaware County, Pennsylvania, 983 F.2d 1277, 1284-85 (3d Cir. 1993).

Accordingly, we conclude that the District Court properly entered summary judgment in favor of Appellees and will affirm its order.

United States District Court
District of New Jersey
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William Martini
JUDGE
LETTER OPINION

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Re: Kurt H. Kramer and Maria E.Kramer v.
Thomas Kubicka and Bonnie Kubicka
Civil Action No.05-2621(WJM)

June 9, 2006

Dear Litigants:

This matter comes before the Court on Defendant's 12(b)(6) motion to dismiss for failure to state a claim and for improper service. Also before the Court is pro-se Plaintiffs' Rule 56 motion for partial summary judgment as to violations of Pennsylvania usury statutes. The motions are both opposed and the Court adjudicates this matter on the papers. Fed. R. Civ. P. 78. For the reasons stated below, the Plaintiffs'

motion is DENIED, Defendant's motion is GRANTED and the Complaint is DISMISSED.

BACKGROUND

Plaintiffs are a married couple who contend they were lifelong friends with married Defendants Thomas and Bonnie Kubicka. During a period from 1978-1993 Defendants loaned Plaintiffs a total of $28, 700 at a range of interest rates, the highest of which was 18%; Plaintiffs signed notes for each loan. Plaintiffs made interest-only payments on these notes until March 24, 1994 at which point they stopped paying altogether. On February 25, 1998, Plaintiffs filed for Chapter 13 bankruptcy; the bankruptcy was dismissed. On June 4, 1999, the Kubickas filed an action against the Kramers in the Buck's County, Pennsylvania, Court of Common Pleas demanding the total outstanding on the notes plus interest for a total of$53,187.20.

Default Judgment was entered against the Kramers in that Pennsylvania action on September 3, 2000 and the Kramers wrote the Kubickas a $59,500 check, dated May 16,2001, for the total judgment in that case; the check was cashed May 18, 2001. Satisfaction was entered in Pennsylvania on July 3, 2001 and in New Jersey on August 7,2001. The Kramers allege that error of counsel led to their default, but they made no attempt to challenge or re-open judgment in the Pennsylvania case before writing their check satisfying the judgment.

Plaintiffs filed their Complaint with this Court on May 18, 2005 and amended it on September 13,2005 and October 27,2005. Plaintiff's claim violation of New Jersey and Pennsylvania usury statutes, and violations of the federal Racketeer Influenced and Corrupt Organizations Statute and Truth in Lending Act. They seek reimbursement of payments made, along with statutory and other damages.

Process was served on Defendant's residence in Pennsylvania; however Defendants were out of the country and service was accepted by a foreign national residing in their house on a "home exchange" program, who turned over the papers to Defendants when they returned 20 days later.

Defendants filed their motion to dismiss pro-se on October 7,2005 for failure to state a claim and asserting insufficient service.[1] On November 28, 2005, Plaintiffs filed their motion for summary judgment on Count XV for relief under Pennsylvania's usury laws. On December 12, 2005, Defendants, now with attorney representation, responded in opposition to Plaintiff's motion for partial summary judgment and in support of Defendants' motion to dismiss.

DISCUSSION

I. Standard for Summary Judgment Pursuant to Rule 56

Summary judgment is appropriate if there is no genuine issue as to any material fact and the

moving party is entitled to a judgment as a matter of law. See Fed. R. Civ. P. 56. Rule 56(e) requires that when a motion for summary judgment is made, the nonmoving party must set forth specific facts showing that there is a genuine issue for trial. See id.; see Anderson v. Liberty Lobby, Inc., 477 U.S. 242,250 (1986). The mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment. Only disputes over facts that might affect the outcome of the lawsuit under governing law will preclude the entry of summary judgment. See Anderson, 477 U.S. at 247-48. If the evidence is such that a reasonable fact-finder could find in favor of the nonmoving party, summary judgment should not be granted. See id; see also Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986). The Court recognizes the long-standing practice of construing pro-se plaintiffs' pleadings liberally, and gives Plaintiffs every benefit of the doubt in its considerations. See, e.g. Us. v. Miller, 197 F.3d 644,648 (3d Cir. 1999).

II. Defendant's Motions to Dismiss are Converted to Motions for Summary Judgment

The rule in evaluating a motion to dismiss is that if matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56 and all parties shall be given a reasonable opportunity to present all material made

pertinent to such a motion by Rule 56. Fed. R Civ. P. 12(b); accord Rose v. Bartle, 871 F.2d 331,340-42 (3d Cir. 1989). The Third Circuit has cautioned that express notice should generally be given before the Court converts a motion to dismiss into one for summary judgment. See, e.g., In re Rockefeller Ctr. Prop., Inc. Secs Litig., 184 F.3d 280,288 (3d Cir. 1999). However when the parties are on sufficient notice of potential conversion and the opposing party is not prejudiced by such con- version, such express notice by the Court is not necessary. See Carver v. Plyer, 115 Fed. Appx. 532, 536-37 (3d Cir. 2004); Hilferty v. Shipman, 91 F.3d 573, 578-79 (3d Cir. 1996). Likewise, when an issue is fully developed in response to a motion for summary judgment, a Court may grant sum- mary judgment for the opposing party when ap-propriate. See Gibson v. Mayor and Council of the City of Wilmington, 355 F.3d 215,224(3d Cir2004).

In the instant case, pro-se Plaintiffs have sub- mitted voluminous pleadings, including affidavits, charts, documentation related to the Pennsylvania action and other evidence both in support of their motion for partial summary judgment and in opposition to Defendants' motion to dismiss. Conversion therefore is appropriate, and would not prejudice Plaintiffs. Accordingly, the Court will consider both motions as ones for summary judgment and dispose of them accordingly.

III. Plaintiffs' Pennsylvania State Law Claims are Barred by Satisfaction of the Pennsylvania Judgment

As an initial matter, Defendants challenge the

propriety of service upon Defendants. However, it appears that service was acceptable under Pennsylvania law. Simmons v. Delaware County Tax Claim Bureau, 796 A.2d 400, 404-05 (Pa. Commw. Ct. 2002); US v. Whitehead, No. Civ.A. 02-9363, 2005 WL 2202992 at *3 (E.D.Pa. Aug. 3, 2005).

Plaintiffs assert jurisdiction under 28 U.S.c. § 1331 pursuant to the Racketeer Influenced and Corrupt Organizations Statute[2] ("RICO") and the Truth in Lending Act ("TILA").[3] Although the pleadings are unclear, the Court assumes that Plaintiffs bring their Pennsylvania and New Jersey state court claims pursuant to supplemental jurisdiction under 28 U.S.c. § 1367. Because the exploration of res judicata necessary for adjudication of these state claims impacts the Court's consideration of the federal claims, the Court will address the state claims first.

In evaluating these state claims, this Court is bound under the Full Faith and Credit Act[4] to give Plaintiffs satisfaction of the Pennsylvania default judgment "the same preclusive effect ... as another court of that State would give." Rycoline Prods., Inc v. C & W Unlimited, 109 F.3d 883,887 (3d Cir. 1997). So the Court must look to relevant state law to determine what preclusive effect the default judgment must have on this Court.

Both Pennsylvania and New Jersey law hold that res judicata, or claim preclusion, will apply to an earlier judgment when three requirements are satisfied:

"1) the judgment in the prior action must be valid,

final, and on the merits; (2) the parties in the later action must be identical to or in privity with those in the prior action; and (3) the claim in the later action must grow out of the same transaction or occurrence .. as the claim in the earlier one."

Hulmes v. Honda Motor Co., 924 F.Supp. 673, 682 n.12 (D.N.I 1996) (citing Watkins v. Resorts Int'l Hotel and Casino, Inc., 591 A.2d 592 (N.J. 1991).) See also Gregory v. Chehi, 843 F.2d 111, 116 (3d Cir. 1988) (interpreting Pennsylvania law).5 Applying these criteria to the present case, the Court finds that both Plaintiff's Pennsylvania and New Jersey state claims are barred.

The rule in both New Jersey and Pennsylvania is that a default judgment is a valid and final adjudication on the merits and therefore has res judicata effect barring future litigation. See Evangel Baptist Church v. Chambers, 233 A.2d 82,84 (N.J. Ch. 1967) ("A default judgment, properly entered, has [no] less binding effect upon possible future interests in land than a judgment entered in a contested matter.") See also Fox v. Gabler, 626 A.2d 1141, 1143 (pa. 1993) ("[J]udgment by default is res judicata and quite as conclusive as one rendered on a verdict after litigation iI,1sofar as a defaulting defendant is concerned.")

Furthermore, the rule in Pennsylvania is that satisfaction of a default judgment prevents any future litigation of defenses to both the default and any underlying claims. As the Pennsylvania Supreme Court held nearly six decades ago, "[it] is elementary that judgment settles everything

involved in the right to recover, not only all matters that were raised, but those which might have been raised." Lance v. Mann, 60 A.2d 35, 36 (pa. 1948). "Because the law contemplates an end to litigation, further proceedings may not commence upon a judgment which has been satisfied." Wilkv. Kochara, 647 A.2d 595, 596 (pa. Super. Ct. 1994) (citing Lance, 60 A.2d at 36.) Id. Plaintiffs provide evidence that they satisfied the Pennsylvania state court action by check dated May 16, 2005. (Compl. at Ex. R; PI's Dec. 27, 2005 Opp. at Ex. V3.)

Finally, it is uncontested that the Kramers and Kubickas were both parties to the Pennsylvania action to enforce the very same debts against which Plaintiffs now try to move under Pennsylvania and New Jersey law. (PI's Dec. 27, 2005 Opp. at Ex. V3.) Therefore, the Pennsylvania state court decision is res judicata precluding the present Pennsylvania and New Jersey statutory claims.

IV. Plaintiffs' Federal Claims are Barred by Res Judicata and the Statute of Limitations

Plaintiffs RICO and TILA claims are similarly barred by satisfaction of the Pennsylvania state court default judgment. However, even if they were not so barred, Plaintiffs TILA claims are plainly improper as Defendants were not creditors as defined by TILA. See 12 C.F.R. 226.2 (1)(17)(1) nJ. Furthermore, all TILA claims have a one ... year statute of limitations that would bar any claim based on the violations alleged in the Complaint. See IS U.S.C. S I 640(e).

Likewise, Plaintiff's RICO claims are time-barred. It is well settled that RICO actions enjoy a four year statute of limitations period. Mathews v. Kidder Peabody & Co., Inc. 260 F.3d 239,244 (3d Cir. 2001). Last payment on the notes at issue was made in 1997 and Plaintiffs' pleadings demonstrate that they were clearly aware of their high interest rate at the time of payment; so any RICO claims on these payments is time-barred. Indeed, the only potential RICO related activity that might fall within the limitations period is Defendant's collection of the Pennsylvania state court satisfaction payment.

Plaintiffs argue that this last payment, arguably cashed precisely four years before the Complaint was filed, was a "collection of an unlawful debt" prohibited by RICO. (Compl. at 16); 18 V.S.c. 9 1962. However, this payment was made to satisfy the Pennsylvania default judgment. As explained above, Plaintiffs' satisfaction of that judgment bars Plaintiffs from the judgment was "unlawful" as any such claims regarding the judgment or underlying debt needed to have been brought before satisfaction.

CONCLUSION

For the reasons set forth above, Plaintiff's motion for partial summary judgment is DENIED, Defendants converted motion for summary judgment is GRANTED and Plaintiffs' Complaint is DISMISSED IN ITS ENTIRETY.

William 1. Martini, U.S.D.J.

cc:The Hon. Ronald J. Hedges, U.S.M.J.